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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/426,827	10/25/1999	KIMBERLY ANN MUDAR	D-43266-01	2390
28236	7590	04/02/2004	EXAMINER	
CRYOVAC, INC. SEALED AIR CORP P.O. BOX 464 DUNCAN, SC 29334			HON, SOW FUN	
			ART UNIT	PAPER NUMBER
			1772	

DATE MAILED: 04/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/426,827	MUDAR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sow-Fun Hon	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 31 December 2003.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1 and 3-26 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3-8,10-24 and 26 is/are rejected.  
 7) Claim(s) 9 and 25 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      Paper No(s)/Mail Date. \_\_\_\_\_.  
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)      5) Notice of Informal Patent Application (PTO-152)  
 Paper No(s)/Mail Date \_\_\_\_\_.      6) Other: \_\_\_\_\_.

**DETAILED ACTION**

***Response to Amendment***

***Rejections Repeated***

1. The 35 U.S.C. 103(a) rejection of claims 1, 3-8, 11-17, 26 over Ferguson et al. ('806) over Walton et al. has been repeated for the same reasons previously of record in the office action dated 08/29/03.
2. The 35 U.S.C. 103(a) rejection of claims 10, 18-24 over Ferguson et al. ('806) over Walton et al. and Ferguson et al. ('403) has been repeated for the same reasons previously of record in the office action dated 08/29/03.

***Response to Arguments***

3. Applicant's arguments filed 12/31/03 have been fully considered but they are not persuasive.
4. Applicant argues that one of ordinary skill in the art would not have learnt from Walton et al. that the polymer disclosed (by Applicant) has superior properties. Applicant argues that Walton et al. clearly teaches the clear superiority of the substantially linear ethylene/alpha-olefin interpolymer having uniform branching distribution for heat shrink films of improved shrink and toughness, and that the office action ignores it.

Applicant is respectfully reminded that Walton et al. is the secondary reference which merely demonstrates that in order to avoid puncturing by sharp exposed bones, it is well known in the art of biaxially-oriented heat-shrinkable film for packaging poultry or meat ('958,

abstract), to provide an extra layer of film at critical points of the bag in a patch-like fashion ('958, column 3, lines 5-10).

Ferguson et al. ('856) is the primary reference which teaches packaging films made into bags which are heat shrinkable and have improved shrink, tear, barrier and puncture resistance properties ('856, column 1, lines 1-15) especially against puncture from bone in meat ('856, column 4, lines 35-46).

Ferguson et al. teaches the multilayer barrier film which comprises a layer comprising a blend of heterogeneous ethylene/alpha-olefin copolymer having a density of less than 0.915 g/cm<sup>3</sup> and a composition distribution breadth index less than 55 percent (VLDPE as defined by the specification, abstract) and ethylene/alpha-olefin copolymer having a density of greater than 0.915 g/cm<sup>3</sup> (LLDPE as defined by the specification, abstract)(a blend of linear low density polyethylene and a very low density polyethylene) ('856, column 5, lines 25-30 and column 10, lines 15-20), a gas barrier layer (inner O<sub>2</sub> barrier layer) (abstract), and an inside-sealant layer such as an inner layer comprises ethylene/unsaturated ester copolymer (EVA) (Example 4) ('856, column 9, lines 10-15).

5. Applicant argues that when considered in its entirety, Walton et al. does not teach that it is necessary or even advisable to place a patch on a bag since it teaches that one of skill in the art would use the disclosed substantially linear ethylene interpolymer to make a heat-shrinkable film in a bag suitable for packaging meat, not a patch to be used in combination with a bag.

Applicant is respectfully apprised that Walton et al. provides evidence that making a patch out of the same material as the bag in order to provide added protection from puncture by bone in meat is notoriously well known in the art.

6. Applicant argues that Walton et al. teaches that the use of patches on bags is an expensive practice, that they are artificial and not necessary when using the improved composition of Walton et al., thus teaching away from the use of patches on bags.

Applicant is respectfully reminded that even one not of ordinary skill in the art of meat packaging would know that an additional layer provides additional protection. Furthermore, the composition blend of Ferguson et al. provides for shrinking of the packaging film in hot water baths ('856, column 6, lines 55-60), which is taught as a great advantage in packaging ('856, column 5, lines 1-5).

7. Applicant argues that Walton et al. was filed 8 years after the filing of Ferguson et al. ('856) such that one of skill in the art reading Walton et al. would use the substantially linear metallocene catalyzed ethylene/alpha olefin copolymer to obtain a film having improved shrink and toughness properties, rather than a film containing the Ziegler catalyzed LLDPE and VLDPE of Ferguson et al.

Applicant is respectfully apprised that the Ziegler catalyzed LLDPE and VLDPE has different shrink properties than metallocene catalyzed ethylene/alpha olefin copolymer as discussed above ('856, column 6, lines 55-60), which is taught as a great advantage in packaging ('856, column 5, lines 1-5). Furthermore, the materials cost less, which is another great advantage in commercial packaging.

8. Applicant point to the evidence of unexpected results as set forth in Table VIII wherein a patch bag having a patch film made form a blend of 75% VLDPE with 25% LLDPE showed unexpected results over a patch bag having a patch film containing homogenous ethylene/alpha-olefin blended with LLDPE.

Applicant is respectfully apprised that the showing of unexpected results for the 75% VLDPE/ 25% LLDPE is not commensurate with the scope and breadth of the claims.

***Conclusion***

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Sow-Fun Hon whose telephone number is (571)272-1492. The examiner can normally be reached Monday to Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached at (571)272-1498. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Sow-Fun Hon  
03/24/04

*Harold Pyon*  
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SUPERVISORY PATENT EXAMINER  
1772

3/29/04